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OFFICE OF PETITIONS

Arnold & Porter LLP
1400 Page Mill Road
Palo Alto, CA 94304

In re Patent No. 7,538,086 : DECISION ON REQUEST FOR
Goddard et al. : RECONSIDERATION OF
Issue Date: May 26, 2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/006,856 : NOTICE OF INTENT TO ISSUE
Filed: December 6, 2001 : CERTIFICATE OF CORRECTION
Atty Docket No. GNE-2830-014 :

This is a decision on the petition filed on Monday, July 27, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand twenty-eight (1028) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **one thousand twenty-six (1026) days**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on December 7, 2004, and ends on October 3, 2007, the day before the RCE was filed, and is 1031 (not 1032) days. See 35 U.S.C. 154(b)(1)(B)(i).

Patentee acknowledges that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii).

However, patentee's calculation of the number of days consumed by appellate review is incorrect.

In this instance, the period consumed by appellate review is 142 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed,¹ February 2, 2006, and ending on the date of the mailing of the non-final Office action, July 13, 2006. Thus, the B delay is 889 days (1031 - 142).

Accordingly, the patent term adjustment is 1026 days (511 days of A delay + 889 days of B delay - 374 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office will charge the \$200.00 fee set forth in 37 CFR 1.18(e) to Deposit Account No. 50-2387 as authorized.

The Office notes that the address given in the petition differs from the address of record; however, the application file does not indicate that a change of correspondence address was filed in this case. If the petitioner desires to receive future correspondence regarding this application, a change of correspondence address must be submitted. The Office will continue to send correspondence to the address of record until otherwise notified. As a one-time courtesy, the Office will mail a copy of the decision to the address listed on the petition.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand twenty-six (1026) days**.

¹ "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." *Id.*

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Cc: Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park CA 94025-1105

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT: 7,538,086 B2

DATED: May 26, 2009

DRAFT

INVENTOR(S): Goddard et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 658 days

Delete the phrase "by 658 days" and insert – by 1026 days--